

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**  
**DIVISION II**

REBECCA S. DAHLEN; DEAN PAGEL and  
NIKKI PAGEL; WILLIAM H. DAHLEN;  
SHIRLEE BONIFIELD and TRAVIS  
BONIFIELD; DAVID O. MILLAR,

Plaintiffs,

THADDEUS J. ARMSTRONG and MARLA  
A. ARMSTRONG; LIZANNE HEPKER,

Respondents,

v.

LAURENCE J. DEE and RICHARD DEE,

Defendants,

and

STEPHEN K. EUGSTER,

Appellant.

No. 34007-1-II

UNPUBLISHED OPINION

QUINN-BRINTNALL, C.J. — Attorney Stephen Eugster appeals a Spokane County Superior Court order granting respondents Thaddeus and Marla Armstrong and Lizanne Hepker attorney fees as sanctions for erroneous objections and motions. Eugster contends the trial court had no authority outside of CR 11 to impose the fees.<sup>1</sup> We hold that the court had inherent

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<sup>1</sup> Division Three transferred this appeal to this court. A commissioner considered the matter

authority to sanction frivolous litigation, but only if it determined that counsel's action was based on an improper motive.

Eugster represented Laurence and Richard Dee in an appeal from several small claims court judgments. The superior court affirmed the judgments on March 4, 2004. On April 6, Eugster filed an objection to the disbursement of funds. He filed a motion on April 7, requesting the trial court to rescind its judgment and orders. On April 8, on an "emergency basis," he asked the court for a stay. Only one of the respondents was able to be present on short notice. The court granted a brief stay and set the matter for hearing on April 23, 2004.

The Armstrongs and Hepker asked for CR 11 sanctions. The court heard argument on Hepker's motion on April 23, but set the Armstrongs' motion over to May 7, because it had not been timely filed for the earlier hearing. Ultimately, the court awarded fees on both motions: \$340 to Hepker and \$500 to the Armstrongs.<sup>2</sup>

The court did not impose the sanctions under CR 11, however. The judge noted that Eugster should have known that a small claims case becomes a new case in superior court, and the civil rules, not the rules on appeal from courts of limited jurisdiction, apply. She further explained:

[This is] a situation where Mr. Eugster's rush to get into the courthouse and deal with this matter and, frankly, inconvenience everybody, the Court who had to make time for him in the middle of criminal proceedings, Counsel who had . . . very short notice to get in here, to deal with this on a matter that never should have been here.

. . . I would not elevate that to a C[R] 11 issue. C[R] 11 sanctions are for folks who come in and do very, they lie to the Court; they lie to the parties. They do, they do things affirmatively that, frankly, are a violation of professional  

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pursuant to a motion on the merits, RAP 18.14, and transferred it to a panel of judges.

<sup>2</sup> Eugster argues that the award to the Armstrongs was simply an unauthorized award of fees, noting that the court struck the word "sanctions" from the order. However, the judge explained that she was awarding those fees on the same basis as the fees to Hepker.

responsibility. They are things that we simply cannot tolerate.

Report of Proceedings (May 7, 2004) at 41-42.

Decisions granting or denying sanctions generally rest within the trial court's discretion. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 338, 858 P.2d 1054 (1993). The court abuses its discretion if it bases its decision on an erroneous view of the law. *Wash. State Physicians Ins. Exch.*, 122 Wn.2d at 339.

Where sanctions are not expressly authorized, a trial court may fashion and impose appropriate sanctions under its inherent authority to control litigation. *In re Matter of Firestorm 1991*, 129 Wn.2d 130, 139, 916 P.2d 411 (1996). However, even under its inherent power, the court may not impose sanctions unless it finds bad faith. *See State v. S.H.*, 102 Wn. App. 468, 475-76, 8 P.3d 1058 (2000). A frivolous claim or motion is not enough; there must also be an improper motive. *See Rogerson Hiller Corp. v. Port of Port Angeles*, 96 Wn. App. 918, 929, 982 P.2d 131 (1999) (citing *In Re Recall of Pearsall-Stipek*, 136 Wn.2d 255, 266-67, 961 P.2d 343 (1998)), *review denied*, 140 Wn.2d 1010 (2000). *See also Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 649 (9th Cir. 1997) (holding that sanctions should be reserved for exceptional cases, not just cases in which the attorney's argument lacks merit).

The trial judge's comments suggest that she believed Eugster's actions were based on inadequate research of the law, rather than an improper motive. The imposition of sanctions without a finding of bad faith or improper motive is contrary to law and thus an abuse of discretion. *See Rogerson Hiller Corp.*, 96 Wn. App. at 929.

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The order imposing attorney fees is reversed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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QUINN-BRINTNALL, C.J.

We concur:

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VAN DEREN, J.

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PENOYAR, J.